

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:12-cr-00121-MMD-WGC

ORDER

v.

BRET OGILVIE AND LINWOOD TRACY,
JR.,

Defendants.

I. SUMMARY

This Order addresses a series of motions separately filed by Defendants Bret Ogilvie and Linwood Tracy, Jr. The Order does not address motions pending where briefing has not completed unless otherwise noted herein. After reviewing the motions, including the responses from the government and Defendants' reply briefs, and the filings in this case, the Court finds that these motions lack merit and denies them.

II. BACKGROUND

On November 28, 2012, Defendants Bret Ogilvie and Linwood Tracy, Jr. were indicted on one count of Conspiracy to defraud the United States for the purpose of impairing and obstructing the Internal Revenue Service of the Treasury Department's ("the IRS") lawful functions of assessing and collecting income taxes. The alleged manner and means of the Conspiracy include making threats to sue the IRS and IRS employees if tax liens and levies were not removed, filing of a lawsuit against IRS

1 employees, and transferring compensation of a bank account under the name of a
2 corporation sole. In addition, the Indictment charges Defendant Ogilvie with one count
3 of Corrupt Interference of Tax Administration and five counts of False Claims involving
4 tax years 2006 through 2010. Summons were to be issued for Defendants to appear
5 on December 26, 2012. (Dkt. no. 2.)

6 On December 20 and 21, 2012, before their arraignment, Defendants separately
7 filed identical emergency motions for subpoenas (dkt. nos. 7 and 11) and three motions
8 to dismiss (dkt. nos. 8, 9, 10, 12, 13 and 14). Defendant Ogilvie also filed a Motion to
9 Dismiss Due To Retaliation, Robo Signing, and Fraud. (Dkt. no. 15.)

10 On December 26, 2012, Defendants made their initial appearance and pled not
11 guilty. Defendant Ogilvie waived his right to counsel. Defendant Tracy insisted on
12 representing himself, but he also requested standby counsel. The Magistrate Judge
13 granted his request and appointed standby counsel.

14 About a month later, on January 23, 2013, Tracy filed another Motion to Dismiss
15 All Charges due to Retaliation, Robo Signing and Fraud with This Amended document.
16 (Dkt. no. 50.) This Motion is similar to a motion of almost identical title filed by Ogilvie.
17 (See dkt. no. 15.)

18 On January 25, 2013, Ogilvie filed a second Motion to Dismiss for Lack of
19 Jurisdiction, which appears to be identical to the motion of the same title filed on
20 December 20, 2013. (Dkt. no. 51.)

21 Because Defendants filed several identical motions, these motions will be addressed
22 together.

23 **III. DISCUSSION**

24 As an initial matter, the Court notes that the various motions to dismiss are
25 similar in that they consist of what appears to be legal arguments taken from other
26 briefs or cases that do not apply to this criminal indictment. These motions do not
27 present meritorious arguments for the Court to consider.

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1 **A. Emergency Motions for Subpoenas (dkt. nos. 7 and 11)**

2 In their separate motions, Defendants moved for issuance of subpoenas for the
3 hearing scheduled for December 26, 2012. However, the referenced hearing was
4 Defendants' arraignment where no examination occurred or would have occurred.
5 Accordingly, the Motions for Subpoenas are denied.

6 **B. Motions to Dismiss Indictment and Charges Based on Szfranski
7 Violations (dkt. nos. 8 and 14)**

8 It is not clear to the Court the basis upon which Defendants are seeking
9 dismissal. Defendants claim the government is engaging in the production of
10 counterfeit securities. The identical Motions consist of purported quotations from cases
11 and legal discussions that are inapplicable to this case. These Motions are therefore
12 denied.

13 **C. Motions to Dismiss for Lack of Jurisdiction (dkt. nos. 9, 13 & 51)**

14 In these Motions, Defendants appear to challenge the government's authority to
15 prosecute them. Defendants offer purported quotes from various regulations, statutes
16 and famous jurists. However, the Court cannot decipher how they support Defendants'
17 request to dismiss for lack of jurisdiction. Moreover, the offenses charged in the
18 Indictment cover violations of the laws of the United States found at 18 U.S.C. §§ 371
19 and 287 as well as 26 U.S.C. § 7212(a). This Court has jurisdiction of all offenses
20 against the laws of the United States. 18 U.S.C. § 3231.

21 **D. Motions to Dismiss Indictment and Charges Based on Violations of
22 Due Process (dkt. nos. 10 and 12)**

23 These Motions similarly recite and quote extensively from purported statutes,
24 rules and cases. However, these discussions do not relate to the offenses charged in
25 the Indictment. To the extent that one of the numerous grounds raised is a challenge to
26 the Grand Jury Indictment, Defendants fail to offer any supporting evidence. Contrary
27 to Defendants' suggestion, the Grand Jury that indicted them was impaneled by the
28 United States District Court for the District of Nevada for the November 14, 2012, term.

1 The roll taken shows that all 23 members of the Grand Jury were present when they
2 issued the Indictment. (See dkt. no. 4.) The records do not show any irregularities in
3 the Grand Jury Indictment here.

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5 **E. Motions to Dismiss All Charges Due to Retaliation, Robo Signing and**
Fraud (dkt. nos. 15 & 50)

6 These Motions suffer from similar deficiencies explained above. Sifting through
7 the irrelevant discussions borrowed from what appears to be other briefs and cases,
8 Defendants seem to challenge the government's authority to prosecute them. In
9 particular, Defendants claim that "[t]he people presenting the indictment were not
10 government officials, since the Government was acting as a bankrupt political
11 organization, and the people were only masquerading as government officials." (Dkt.
12 no. 15 at 2-3; see *id.* at 6-7; dkt. no. 50.) The Court finds that this contention has no
13 merit.

14 These Motions also raise the same claim of irregularities in the Grand Jury
15 Indictment. As discussed above, the records do not support this claim.

16 **IV. CONCLUSION**

17 The content of the motions filed in this case raises a concern for the Court as to
18 Defendant Ogilvie's decision to waive his right to counsel and Defendant Tracy's
19 decision to seek only standby counsel. The Court intends to revisit these issues at the
20 calendar call scheduled for February 13, 2013.

21 IT IS THEREFORE ORDERED that the motions referenced as the following
22 docket nos. are denied: 7, 8, 9, 10, 11, 12, 13, 14, 15, 50 and 51.

23 IT IS FURTHER ORDERED that Defendants not file any additional motion that is
24 a copy of the motions addressed in this Order.

25 DATED THIS 5th day of February 2013.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE